IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JAIPUR BENCH

S.B. CRIMINAL MISC. PETITION NO.131/2000

Raisa Bano **Versus** Manzoor Ahmed

DATE OF ORDER :: 04/10/2007

HON'BLE MR. JUSTICE AJAY RASTOGI

Mr. Aslam Khan, for petitioner
Mr. N.A. Naqvi, for respondent

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Instant petition has been filed by petitioner-wife assailing the order dated 5th October, 1999 whereby Revisional Court has recorded finding that there was no valid talak/divorce between the parties on 10th July, 1985 – as a consequence whereof, her application seeking maintenance for herself u/s.125 Cr.P.C. and so also for her minor son, stood rejected under impugned.

Facts giving rise to present controversy in the instant petition are that marriage between petitioner and respondent was solemnized on 28th January, 1984. Application was filed by petitioner u/s.125 Cr.P.C. seeking maintenance for herself and her minor son. After notice was served, written statement was filed in which it was disclosed that since they were not maintaining good relations, he had divorced her on 10th July, 1985 and which as alleged by him was duly communicated to her. As such, neither

petitioner nor her son was entitled for maintenance as he was born on 5th November, 1986 after the alleged talak/divorce was executed between the parties. Since its communication was disputed by petitioner, evidence was led before learned trial Judge by both the respective parties in support of their contention and learned trial Judge after scrutinizing the evidence considered to be a valid talak and observed that since it came to her notice on 27th July, 1988 it will be given effect to from the date of her knowledge and accordingly, it was finally observed that she became entitled for maintenance from 30th January, 1988 the date on which she had filed application upto 27th July, 1988 for maintenance u/s.125 Cr.P.C. and from 28th July, 1988 liberty was granted to her for filing application u/s.3 of the Act, 1986 and her son also became entitled for maintenance. Against said order, respondent-husband preferred revision petition which was allowed on 5th October, 1999 and observed that it was a valid talaknama dated 10th July, 1985 and was given effect to from the date it was scribed and signed by him – as a consequence whereof, neither the wife nor her son became entitled for maintenance u/s.125 Cr.P.C.

Counsel for petitioner submits that learned trial Judge has taken into consideration the evidence led by parties and finally arrived to a conclusion that talak infact was to be given

effect to from the date it came to her notice i.e. from 27th July, 1988. As such, learned Court of Revision without proper appreciation of material has reversed the said finding which is not legally sustainable and the same deserves to be set aside.

Counsel for respondent while supporting the finding recorded under order impugned submits that Court of Revision has properly appreciated the material came on record and does not call for interference.

I have considered the submissions of counsel for parties and perused the order impugned.

Learned trial Judge in his order dated 31st August, 1994 has discussed the evidence led by parties in detail and finally recorded finding that the talak which as alleged was executed by the respondent husband on 10th July, 1985 for the first time came to her notice after she filed application for maintenance u/s.125 Cr.P.C. on 27th July, 1988 and from this date it can be given effect to. As a consequence whereof, she & her son became entitled for maintenance u/s.125 Cr.P.C. for the period referred to under order impugned dated 31st August, 1994. Learned Court of Revision infact has not appreciated the evidence led by the parties and basically proceeded on the premise that once talak has been considered to be

a valid, as such it has to be given effect to from the date it was scribed and signed by respondent-husband.

This court is of the opinion that the finding recorded by Court of Revision is totally perverse and deserves to be set aside.

Accordingly, the misc. petition stands allowed. The order of Court of Revision dated 5th October, 1999 is hereby quashed and set aside. Recorded be sent back to trial court forthwith, who is directed to proceed with the matter in accordance with law. Both the parties are directed to appear before learned trial Judge on 19th November, 2007.

[AJAY RASTOGI],J.